APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil No. 1963-63

RAYMOND SHEAFFER, ET AL., *Plaintiffs*

v.

WAREHOUSE EMPLOYEES UNION, LOCAL 730, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Defendant*

Order

On January 8, 1968, this Court dismissed this suit for want of prosecution by the plaintiffs.

Plaintiffs now ask that the Order of January 8, 1968, be vacated.

The question here is whether or not the plaintiffs have shown reasonable diligence in the prosecution of this suit.

A review of the chronology of this suit shows the following:

The acts of the defendant of which the plaintiffs complain are alleged to have occurred from July 23, 1961 to August 25, 1961.

The plaintiffs' complaint was filed August 1, 1963, 2 years from the period during which the alleged commission of the acts complained of occurred. The applicable Statute of Limitations permitted the plaintiffs 3 years within which to file their action, but once the action was filed, it became the plaintiffs' duty to prosecute the action with reasonable diligence and to obey all orders and rules of this Court in relation thereto.

Service of the complaint was had on the defendant on August 19, 1963.

On September 27, 1963, defendant filed a Motion to Strike Paragraph XVIII of the complaint. On October 4, 1963, at plaintiffs' request, the time to Answer the motion to strike was extended from October 5, 1963 to October 21, 1963. On October 21, 1963, plaintiffs filed their opposition to defendant's motion to strike. On November 8, 1963, the motion to strike was denied.

On November 27, 1963, plaintiffs filed an Amended Complaint under FRCP 15(a).

The defendant filed an Answer to the Amended Complaint on January 14, 1964. The record does not disclose the reason or excuse for the late filing of the Answer to the Amended Complaint. If it was by stipulation, then no written stipulation was filed as required by Local Civil Rule 3.

On January 14, 1964, the cause was calendared pursuant to Local Civil Rule 11(b). With the calendaring of the cause, it became the duty of the plaintiffs to expeditiously undertake such discovery as might be called for and then to file and serve a Certificate of Readiness as provided in Local Civil Rule 11(d). To this date, the file indicates no discovery by plaintiffs and it is, therefore, to be assumed that no discovery was required. This being so, it was the duty of the plaintiffs, in order to reasonably expedite the trial of this matter, to file a Certificate of Readiness within a reasonable time after January 14, 1964, unless there was good and valid reason for not doing so, and no such reason appears in the file.

The case was assigned for Calendar Call on October 6, 1964. This lacked but a few days of being 10 months from the time the case was Calendared and during which time the plaintiffs filed no motions, undertook no discovery and filed no Certificate of Readiness. On October 2, 1964, counsel for defendant wrote to counsel for the plaintiffs and

advised that defendant's counsel had talked to the Pre-Trial Office and that it would not be necessary for either counsel to appear at the Calendar Call on October 6, 1964. Defendant's counsel further advised plaintiffs that the case would be called on that date and "your 6 months (Local Civil Rule 13(a)) would run from that date."

The case was called on the Calendar on October 6, 1964, and, due to an error in the Pre-Trial Office, the case was dismissed for want of prosecution because of failure of plaintiffs to respond to the Call. When this mistake was called to the attention of Miss Elizabeth Bunten, Assistant Pre-Trial Examiner, she prepared an Order vacating the dismissal of October 6, 1964, and this Order was signed by Judge Keech on October 19, 1964.

The effect of the Order of Judge Keech of October 19, 1964, was not only to set aside the dismissal of October 6, 1964, but to start the 6-month period for filing a Certificate of Readiness under Local Civil Rule 13(a) running from October 19, 1964, or until April 19, 1964. During this period plaintiffs again took no action to file a Certificate of Readiness or to in any other manner take steps looking toward the trial of the issues framed in the Amended Complaint and Answer. The plaintiffs simply permitted the case to remain dormant while the claim grew staler and staler and the memories of witnesses grew dimmer and dimmer.

On April 23, 1965, the Clerk of this Court entered a notation of dismissal of this action under Local Rule 13 for failure to prosecute as of April 19, 1965, the end of the 6-month period from Judge Keech's Order of reinstatement. The Clerk notified the parties of the dismissal as required by the Rule.

The foregoing action by the Clerk stirred the plaintiffs out of their lethargy, but only slightly. On April 28, 1965, the plaintiffs filed a motion to reinstate the action pursuant to Rule 13. The only excuse or reason given by plaintiffs

for reinstating the action dismissed pursuant to Rule 13 was "Plaintiff has proceeded on the understanding that defendant would arrange for re-scheduling of a pre-trial conference at the convenience of the defendant." This alleged reason is a *non sequitur* since a pre-trial conference would have no effect on the running of the 6-month period under Local Civil Rule 13. The reason would further suggest that plaintiffs had surrendered the management of their case on the Calendar to defendant's counsel.

On May 5, 1965, defendant filed Points and Authorities and Affidavit in Opposition to plaintiffs' motion to reinstate the action dismissed pursuant to Rule 13. The motion at this time became ripe for hearing, notwithstanding which fact the plaintiffs allowed the matter to remain in limbo until January 7, 1966, when it was finally presented to the Pre-Trial Examiner.

On January 7, 1966, the Pre-Trial Examiner, after hearing no motion to reinstate the action, granted the same and marked the case "Called" as of this date. The effect of this Order was to start Rule 13 running again, from January 7, 1966.

Again the plaintiffs dawdled and finally, on June 20, 1966, shortly before the end of the reinstated Rule 13—6-month period, plaintiffs' counsel filed a Certificate of Readiness.

The next action in this matter was some 8 months later when on February 21, 1967, the matter came on for Pre-Trial hearing before Miss Elizabeth Bunten, Assistant Pre-Trial Examiner.

In the Pre-Trial Order of February 21, 1967, which was signed by counsel for both Plaintiffs and Defendant and a copy of which was given to each counsel, the following Order to counsel for the plaintiffs and Stipulation between counsel were included:

Page 4: (Pre-Trial Order)

> "NOTE: The Examiner directed counsel for plaintiffs to furnish her for attachment to this Order, copy to counsel for defendant, the computation of compensatory damages claimed on or before 3/15/67."

At Page 6: (Pre-Trial Order)

> "Counsel agree to exchange the names and addresses of all witnesses known to them, including experts but exclusive of impeachment witnesses, on or before March 22, 1967, filing a copy of said list with the Clerk of the Court, and if either counsel should thereafter learn of any additional witnesses prior to trial, he will inform opposing counsel promptly and prior to trial, filing a supplemental witness list with the Clerk."

The plaintiffs ignored the Order of the Pre-Trial Examiner to furnish the computation of compensatory damages by March 15, 1967, and ignored the Stipulation to furnish the names and addresses of witnesses on or before March 22, 1967.

The case was put on the Daily Assignment on April 3, 1967, at which time the case could not have been tried due to the failure of plaintiffs to comply with the Pre-Trial Order and Stipulation.

On April 7, 1967, the plaintiff having failed to obey the Order and Stipulation of the Pre-Trial Order, as set forth above, the defendant filed a motion to dismiss or in the alternative to strike from the calendar this cause of action. Service on plaintiffs' counsel was by mail. Since service of the motion was by mail, the plaintiffs had 8 days from April 7, 1967, to file Points and Authorities in opposition to the Motion. Plaintiffs filed no Points and Authorities in opposition to the Motion within the 8-day period or at any other time.

On April 27, 1967, a month and 12 days after the Pre-Trial Examiner had ordered the same filed, the plaintiffs did file in the cause their statement of compensatory damages. On the same date, plaintiffs filed their list of witnesses which was a month and 5 days after they had stipulated that they would file them.

On April 21, 1967, the defendant's motion to dismiss or strike from the trial calendar came on for hearing before Judge Jones and Judge Jones granted the motion to strike from the Ready Calendar. So, we find that due

to the failure of the plaintiffs to prosecute their suit with reasonable diligence, this case is stricken from the Ready Calendar 5 years and 8 months after the alleged events giving rise to the cause of action and 3 years and 8 months after the action was filed. During all of this time the claims are growing staler and staler and the memories of witnesses dimmer and dimmer.

On May 1, 1967, pursuant to his ruling of April 21, 1967, Judge Jones signed an Order formally striking the matter from the Ready Calendar and noting in his Order that no opposition had been filed by the plaintiffs to the Motion to Strike.

On November 6, 1967, over 4 years after the filing of this suit, Albert J. Ahern, Jr., Esquire, entered his appearance as co-counsel for the plaintiffs. Since that time this case has been handled in a diligent manner on plaintiffs' behalf in sharp contrast to the lethargic progression and retrogression of this case from January 14, 1964 to November 6, 1967. The activities of plaintiffs' new co-counsel, while admiral in their vigor, come too late to breathe life into this moribund case.

On November 6, 1967, Mr. Ahern filed a Certificate of Readiness in this matter. By the time this last Certificate of Readiness was filed, this case had been pending for more than 4 years with no action being taken by the plaintiffs nor their counsel to reasonably expedite the trial of this case in any way. On November 16, 1967, defendant filed an Opposition to the Certificate of Readiness and moved to dismiss the action for failure to prosecute. Plaintiffs filed a Reply to Opposition to Certificate of Readiness and Motion to Dismiss for Failure to Prosecute on November 29, 1967. This matter was heard by the Assistant Pre-Trial Examiner on December 8, 1967, who recommended that the Opposition to the Certificate of Readiness be overruled and further recommended that defendant's Motion to Dismiss for Want of Prosecution be denied.

On December 12, 1967, defendant filed Objections to the Examiner's recommendations and asked that the cause be dismissed under Rule 13. These objections were replied to by plaintiffs on December 20, 1967. Defendant's Objections came on for hearing before this Court on January 5, 1968, and, after examining the file and hearing arguments of counsel, the Court dismissed the cause for want of prosecution.

The entire history of this case, from the calendaring of the cause on January 14, 1964, to the entry of Mr. Ahern as co-counsel for the plaintiffs on November 6, 1967, is a classic example of foot-dragging, indifference and sleeping on rights by the plaintiffs. At no time during this entire period is it possible to conclude that the plaintiffs showed any reasonable diligence in prosecuting this suit but to the contrary, they showed complete indifference to their obligation to move this case forward to trial with reasonable diligence and they ignored and flouted the Orders of this Court, their own Stipulations and the Rules of this Court.

As a result of the indifference and dilatory tactics during the period indicated by plaintiffs and their counsel, this matter again became ripe for hearing at a time 6½ years after the alleged acts the plaintiffs complained of and 4½ years after the complaint was filed.

Had the same diligence been shown in prosecuting this case after it was calendared on January 14, 1964, as has been shown since November 6, 1967, this case would have been tried and disposed of years ago.

In view of the foregoing, the Court concludes that the dismissal of this action on January 8, 1968, was proper and the Motions to Vacate said Order be and the same hereby is denied.

GEORGE L. HART, JR.
Judge

Date: February 1, 1968

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21,687

RAYMOND SHEAFFER, ET AL., *Appellants*

v.

WAREHOUSE EMPLOYEES UNION, LOCAL NO. 730, ETC., *Appellees*

Appeal from the United States District Court
for the District of Columbia

Decided January 23, 1969

Mr. Albert J. Ahern, Jr., with whom *Mr. John K. Pickens* was on the brief, for appellants.

Mr. John J. McBurney, with whom *Mr. James F. Carroll* was on the brief, for appellees.

Before: FAHY, *Senior Circuit Judge*, McGOWAN and TAMM, *Circuit Judges*.

TAMM, *Circuit Judge:* This case comes before us an appeal from an order of the District Court (issued January 8, 1968) (J.A. 75) dismissing appellants' claim for want of prosecution and as an appeal from an order (issued February 1, 1968) (J.A. 89-97) of the District Court denying appellants' motion to vacate, under Fed. R. Civ. P. 60(b), the aforementioned order dismissing appellants' claim. Since we find that the trial judge did not abuse his discretion in dismissing this cause of action, we must affirm the District Court's order.

The merits of this case, which of course are not before us, involve a suit by appellants seeking compensatory and

punitive damages under Section 303 of the Taft-Hartley Act, as amended, 29 U.S.C. § 187 (1964). The acts complained of occurred in the late summer of 1961. The complaint was not filed, however, until August 1, 1963, nearly two years later. A detailed account of all the proceedings in this action from its inception in August, 1963 until its demise in February, 1968 is set out in the District Court's order denying appellants' motion to vacate the court's prior order (J.A. 89-97). We need not reiterate these facts in detail. Upon inspection of all the pleadings we find that this case was handled in an extremely dilatory fashion. The record reflects numerous violations of our local court rules and pre-trial orders, and a complete lack of diligence in bringing the case to trial as evidenced by the continually tardy filing of the appropriate motions and papers. Appellants' lethargy ceased on November 6, 1967, when their present cousel entered the case as co-counsel. We find, however, that after over four years of procrastination his arrival came too late to save appellants' cause of action.

What requires emphasis here is the plain fact that appellants have not complied with the rules of the District Court which were promulgated with a view toward increasing judicial efficiency. Congested court dockets, vexatious to all litigants, are the direct result of lax implementation and enforcement of court rules. Here, appellants assert that their latest violation, of local rule 13(a),[1] is excusable and

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[1] Rule 13(a) of the Rules of the United States District Court for the District of Columbia provides in pertinent part:

(a) *Dismissal Without Prejudice: Notice of Warning.*

> If a party seeking affirmative relief fails for six months from the time action may be taken to comply with any law, rule or order requisite to the prosecution of his claim . . . or take other action looking to the prosecution of his claim, or to file a certificate of readiness under Rule 11(d) within six months of the date the action is called on the call of the civil calendar, the complaint shall stand dismissed without prejudice . . .

that strict enforcement of such constitutes "judicial nit-picking in an attempt to justify an improper order" (Brief for Appellants at 19-20). We do not agree; rather, we feel that local rule 13(a) has legal efficacy and should be enforced. The history of this litigation provides no good reason for an exception to the enforcement of court rules.[2]

It is clear that the District Court has the "inherent power" to dismiss a case for want of prosecution. *Link* v. *Wabash R.R. Co.*, 370 U.S. 626 (1962); *Slavitt* v. *Meader*, 107 U.S. App. D.C. 396, 278 F.2d 276 (1960); *Dyotherm Corp.* v. *Turbo Machine Co.*, 392 F.2d 146 (3d Cir. 1968); *Kenney* v. *California Tanker Co.*, 381 F.2d 775 (3d Cir. 1967), *cert. denied*, 390 U.S. 904 (1968). This power exists independent of the authority of the Federal Rules of Civil Procedure (Rule 41(b)) or any local rules of court (rule 13(a), *supra* note 1).

It is of utmost importance to note that this power exists only in the District Court, not here on appeal. Our function is to determine whether the District Court "abused its discretion" in dismissing this case. *Barger* v. *Baltimore & Ohio R.R.*, 75 U.S. App. D.C. 367, 130 F.2d

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[2] Appellants' counsel stresses the fact that he was "24 hours away from having . . . (the case) tried . . ." when the trial judge dismissed it (Brief for Appellants at 21). Actually, the case was set for trial on January 9, 1968. In the oral argument before Judge Hart on January 5, 1968, appellants' counsel never mentioned the specific trial date; rather, he stated only that "it's ready for trial" (J.A. 17), with no further elaboration. Counsel did, however, specifically state the trial date in the order he submitted to the trial judge on January 8, 1968. The trial judge did not sign appellants' counsel's order and instead signed the order submitted by the appellee's counsel. We feel that in view of the entire record in this case, which reflects extreme lethargy, the trial judge did not abuse his discretion in dismissing for want of prosecution, notwithstanding the impending January 9th trial date.

401 (1942); *Shotkin* v. *Westinghouse Electric & Mfg. Co.*, 169 F.2d 825 (10th Cir. 1948); *Taub* v. *Hale*, 355 F.2d 201 (2d Cir.), *cert. denied*, 384 U.S. 1007 (1966); *Pearson* v. *Dennison*, 353 F.2d 24 (9th Cir. 1965). We feel that no abuse of discretion occurred here in view of the long history of procedural ineptness and delay on the part of appellants.

Two other contentions of appellants merit discussion. Appellants' counsel argues forcefully, within the framework of a vitriolic personal attack upon the trial judge, that this case was dismissed on January 8, 1968, on the basis of "matter[s] . . . not before him . . ." (Brief for Appellants at 15). In addition, appellants argue that the decision of the trial court was a "gross departure from comity and the law of the case . . .". (Brief for Appellants at 24). We feel that under the relevant authority it is clear that the trial judge is entitled to inspect the entire procedural history of the case before deciding whether to dismiss it for want of prosecution. *Sandee Manufacturing Co.* v. *Rohm & Haas Co.*, 298 F.2d 41 (7th Cir. 1962); *Deep South Oil Co. of Texas* v. *Metropolitan Life Insurance Co.*, 310 F.2d 933 (2d Cir. 1962). Each case, of course, must be evaluated within its own procedural context. With this in mind, a dismissal based upon the record in appellants' case simply cannot be considered an abuse of discretion.

Contrary to appellants' assertion, the action of the trial judge, based upon the particular history of the case, is well supported. *Slavitt* v. *Meader, supra; Darlington* v. *Studebaker-Packard Corp.*, 261 F.2d 903 (7th Cir. 1959), *cert. denied* 359 U.S. 992; *Shotkin* v. *Westinghouse Electric & Mfg. Co., supra; Gorsuch* v. *Provident Security Life Insurance Co.*, 392 F.2d 200 (9th Cir. 1968); *Garden Homes, Inc.* v. *Mason*, 249 F.2d 71 (1st Cir. 1957), *cert. denied* 356 U.S. 903 (1958); *Sweeney* v. *Anderson*, 129 F.2d 756 (10th Cir. 1942); *United States* v. *Chas. Kurz Co.*, 396 F.2d 1013 (C.C.P.A. 1968); 5 J. Moore, Federal Practice § 41.11(2) (2d ed. 1967); Fed. R. Civ. P. 41(b).

We find therefore that, upon inspection of the entire record, the trial judge did not abuse his discretion in dismissing appellants' cause of action for want of prosecution. The order of the District Court is therefore

Affirmed.

FAHY, *Senior Circuit Judge:* I concur in affirmance. On the whole record I do not think the District Judge abused his discretion in dismissing the case for want of prosecution.